

**ALTERNATIVE DISPUTE RESOLUTION IN THE SOUTHERN DISTRICT
HIGHLIGHTS OF LOCAL RULE 83.12**

GENERAL

- Mediation is an ADR process in which a neutral third party directs settlement discussions, but does not evaluate a case’s merits or render judgments.
- Mediation in the Southern District is administered by Staff Counsel, appointed by the Clerk of the Court.

ELIGIBLE CASES

- All civil cases, with the exception of social security, tax, prisoners’ civil rights and pro se cases, are eligible for mediation.

PROCEDURES FOR ENTERING MEDIATION

- Parties in all eligible cases shall consider mediation and report to the assigned Judge or Magistrate Judge at the initial conference whether mediation could be successful.
- The assigned Judge or Magistrate Judge may order a case to mediation with or without the consent of the parties OR parties may consent to participation by stipulation.

MEDIATORS

- Staff Counsel assigns a certified mediator: an individual who has been a member of a state bar for at least five years; is admitted to practice in the SDNY; and is determined to be competent by the certifying judge.

MEDIATION SESSIONS

- No less than seven days prior to the first session, the parties must submit a mediation statement, not to exceed ten pages double-spaced, directly to the mediator only, outlining the party’s contentions as to liability, damages and any settlement negotiations.
- The attorney primarily responsible for each party must attend the first session with full authority to resolve the matter. (See Best Practices for other suggested attendees.)
- The entire process is confidential, including the identity of the mediator.

CONCLUSION

- The mediation concludes when the parties reach resolution or when the mediator concludes that resolution is impossible.
- If resolution is reached, the parties will sign a binding agreement and file the appropriate stipulations with the court.

**MEDIATION IN THE EASTERN DISTRICT
HIGHLIGHTS OF LOCAL RULE 83.11**

GENERAL

- Mediation is a process in which parties agree to meet with a neutral mediator trained to assist in settling disputes.

PROCEDURES FOR ENTERING MEDIATION

- Judges and Magistrate Judges may designate civil cases for inclusion in the mediation program with an order OR parties may consent to participation by stipulation.
- An order designating a case for mediation must set a mediation deadline within six months of the entry of the order.

MEDIATORS

- Parties may use a mediator from the court’s panel, select their own, or seek the assistance of a neutral ADR organization.
- Mediators on the court’s panel are:
 - members of a state bar for at least five years;
 - trained in mediation;
 - interviewed and screened by the court.

MEDIATION SESSIONS

- Mediators schedule sessions within 30 days from the date they were appointed.
- No less than seven days prior to the session, the parties must submit a mediation statement, not to exceed ten pages double-spaced, directly to the mediator only, outlining key facts and legal issues.
- At the initial session, which can be held at the court, the mediator’s office or any other mutually agreed upon location, the mediator will meet with all parties to explain the process, ask questions and then typically caucus with the parties individually.
- The mediator may hold additional sessions as are necessary.
- All parties will be asked to sign confidentiality agreements shielding the mediator from liability and shielding statements or documents made for the purposes of mediation from use in subsequent related litigation.

CONCLUSION

- The mediation must conclude by the date fixed in the designation order.
- If there has been no resolution by this date, the case proceeds to litigation.
- If there has been a settlement, the parties will sign a binding agreement and file the appropriate stipulations with the court.

**ARBITRATION/MEDIATION SOURCES AND
CONTACT INFORMATION**

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**GUIDE
TO
MEDIATION
IN THE
SOUTHERN & EASTERN
DISTRICTS OF NEW YORK**

PREPARED BY

**FEDERAL COURTS COMMITTEE OF THE
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**BEST PRACTICES FOR MEDIATION:
TIPS FOR ATTORNEYS**

THINK ABOUT MEDIATION EARLY

- Consider whether your case lends itself to resolution by mediation.
- Discuss the possibility of mediation with your client; outline the benefits and possible downside to mediation.

PREPARE YOURSELF

- Mediators and judges expect you to take mediation seriously; mediators may report an unprepared attorney to the judge assigned to your case.
- While mediators’ styles differ, they will expect you to present your case orally and to be aware of and communicate the strengths and weaknesses of your case on both the facts and the law.
- Review prior settlement discussions. Consider alternatives for settlement that may be agreeable to your client and the other side.

PREPARE A MEDIATION STATEMENT

- You must submit a mediation statement at least a week prior to mediation — the purpose of this document is to aid the mediator in understanding the case from your client’s point of view.
- Although the statement need not be formal or lengthy, there are important things to consider, including:
 - A summary of prior negotiations between the parties;
 - Your client’s goals (pecuniary or non-pecuniary, e.g. an apology);
 - Law and facts that support your position;
 - An analysis of your adversary’s position;
 - Settlement possibilities you are willing to consider;
 - Barriers to settlement (financial, emotional, etc.);
 - Observations about the litigation process or the litigants that have impaired or aided settlement efforts to date, or which you believe will affect settlement.

**BEST PRACTICES FOR MEDIATION:
TIPS FOR ATTORNEYS (continued)**

PREPARE YOUR CLIENT

- Your client will be expected to participate: the mediator will want to hear from your client, often in the presence of the other parties, their counsel and any relevant insurance company representative. Discuss with your client beforehand whether he or she is prepared to do so.
- Your client must be familiar with the case: be sure your client can articulate what the case is about in his or her own words. Practice as though the client is to testify — mediation is an opportunity for the other side to “size up” your client, and vice-versa.
- Review the mediation process with your client: explain that it is an effort to resolve the matter and that the parties’ expectations must be reasonable for the process to be effective; ask your client about non-pecuniary items that may help to reach an agreement.

EXCHANGE INFORMATION

- Determine information needed before mediation.
- If formal discovery is not complete, consider voluntary informal disclosure of key information.
- Documents that are confidential may be produced in connection with mediation pursuant to a confidentiality agreement.

MAINTAIN CONFIDENTIALITY

- Before commencing mediation, consider an agreement memorializing that mediation proceedings are confidential as a supplement to existing court rules on the subject.

**BEST PRACTICES FOR MEDIATION:
TIPS FOR ATTORNEYS (continued)**

AT MEDIATION

- All relevant parties must be present! This includes:
 - Trial counsel;
 - Your client or a representative of your client’s with full settlement authority — this means someone with enough authority to settle the case then and there;
 - Any relevant insurer representative.
- The mediator may hold a pre-mediation conference: if such a conference is not scheduled, you may request one to prepare for the mediation. At that time, you can inquire whether you, your client, or both will be expected to make a presentation.
- At the mediation, the mediator will meet with the parties, counsel and insurance representatives together. There is no blueprint for mediation; however, in most cases the mediator will first ask that both the clients and lawyers describe their case in the presence of everyone.
- The mediator is not a judge. While lawyers remain advocates during a mediation, careful thought should be given to the way in which points are communicated to facilitate a spirit of compromise if settlement is the ultimate goal.
- The mediator may speak to each side separately: keep in mind that under the mediation rules, the mediator *cannot* tell the judge what is discussed in mediation — this is confidential.
- The mediator will often talk to each side more than once, particularly if progress is being made: keep in mind that the more information and ideas you provide, the more successful mediation will be.
- Be creative: suggest a new approach or an alternative way of viewing the case that will aid in settling the case.

RESOURCES/BIBLIOGRAPHY

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